



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0693]

RIN 1625-AA00

Safety Zone; Elizabeth River; Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of the Elizabeth River in the vicinity of the Midtown Tunnel, Portsmouth, Virginia for 12 periods of 48 hours each beginning at midnight on January 1, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30 and April 6, 2015. This proposed safety zone is intended to restrict vessel movement in the specified area during the construction of the new Midtown Tunnel. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the aforementioned dates due to the increased amount of work vessels in the area.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT 30 DAYS AFTER BEING PUBLISHED IN**

THE FEDERAL REGISTER] .

ADDRESSES:

You may submit comments identified by docket number using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.
- (2) Fax: 202-493-2251.
- (3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668-5580, e-mail HamptonRoadsWaterway@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to www.regulations.gov,

type the docket number [USCG-2014-0693] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0693] in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. However, you may submit a request for one at least 15 days prior to the end of the comment period specified in DATES, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

SKW Constructors is constructing a new Midtown Tunnel in the Elizabeth River connecting Norfolk, VA to Portsmouth, VA. The project has been ongoing since 2011. This is the first stage of construction that requires a closure of the waterway.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701,

3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Due to increased vehicle traffic in the Hampton Roads area, SKW Constructors, in concert with Elizabeth River Crossings and the Virginia Department of Transportation, is constructing a second tunnel parallel to the existing Midtown Tunnel between Norfolk, VA and Portsmouth, VA. The construction will consist of submerging segments of the new Midtown Tunnel in the Elizabeth River. Due to the high volume of working vessels and submerged equipment, the Coast Guard proposes to close the Elizabeth River for twelve 48-hour periods to allow SKW Constructors to install the segments of the tunnel that overlap the federal channel. The Coast Guard proposes to establish a safety zone in a portion of the Elizabeth River between Elizabeth River Channel Buoy 31 (LLNR 9835) and Elizabeth River Channel Buoy 34 (LLNR 9835). The proposed closures will last 48 hours in length, with each respective period beginning on January 1, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30 and April 6, 2015. The dates and hours are subject to change due to weather, scheduling conflicts, equipment failure and other unforeseen factors. Any changes to these dates will be listed in the Final Rule and communicated via marine information broadcasts.

D. Discussion of the Proposed Rule

The Captain of the Port of Hampton Roads proposes to establish a safety zone within the waters of the Elizabeth River, from Elizabeth River Channel Buoy 31 (LLNR 9835) to Elizabeth River Channel Buoy 34 (LLNR 9855) across the entire width of the channel, in the vicinity of Portsmouth, VA. This proposed safety zone will be enforced for twelve 48 hour periods beginning at midnight on January 1, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30 and April 6, 2015. In the event of inclement weather that prevents the necessary work from taking place safely, each time period may be pushed back by up to 24 hours. Appropriate notifications will be made via marine information broadcasts in the event of a change in the schedule as soon as possible. Access to the safety zone will be restricted during the specified dates and times.

Except for vessels authorized by the Captain of the Port or his designated Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the safety zone on the Elizabeth River in the vicinity of Portsmouth, VA. Although these regulations prevent traffic from transiting a portion of the Elizabeth River during the construction, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in specified waters of the Elizabeth River during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zone will only be in place for a limited duration, (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly, and (iii) the Captain of the Port may grant permission to transit through the zone on a limited basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If

the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule

and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one

of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34-g of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 -REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0693 to read as follows:

§ 165.T05-0693 Safety Zone, Elizabeth River; Portsmouth, VA

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, U.S. Coast Guard Sector Hampton Roads. Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Hampton Roads to assist in enforcing the security zone described in paragraph (b) of this section.

(b) Location. The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25-10: the Elizabeth River between Elizabeth River Channel Buoy 31 and Elizabeth River Channel Buoy 34, across the entire width of the federal channel.

(c) Regulations. (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated Representative.

(2) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Hampton Roads or his designated Representative. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If

permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Hampton Roads or his designated Representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) Enforcement Period: This section will be enforced from 12 a.m. January 1 to 11:59 p.m. January 2, 2015; 12:00 a.m. January 12 to 11:59 p.m. January 13, 2015; 12 a.m. January 19 to 11:59 p.m. January 20, 2015; 12 a.m. January 22 to 11:59 p.m. January 23, 2015; 12 a.m. January 27 to 11:59 p.m. January 28, 2015; 12 a.m. February 9 to 11:59 p.m. February 10, 2015; 12 a.m. March 2 to 11:59 p.m. March 3, 2015; 12 a.m. March 5 to 11:59 p.m. March 6, 2015; 12 a.m. March 10 to 11:59 p.m. March 11, 2015; 12 a.m. March 23 to

11:59 p.m. March 24, 2015; 12 a.m. March 30 to 11:59 p.m. March 31, 2015; and 12 a.m. April 6 to 11:59 p.m. April 7, 2015. In the event of inclement weather, each date will be shifted up to 24 hours later.

Dated: August 8, 2014.

Christopher S. Keane,
Captain, U.S. Coast Guard,
Captain of the Port Hampton Roads.

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Date: 08/25/2014]